

# Advocating for the Needs of the Oral Deaf Student

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## I. General Introduction

The educational needs of the deaf or hard of hearing student presents unique challenges that public schools do not always understand. Public schools are used to dealing with disabilities that impact how the student processes information or behaviors that make it difficult for the child to learn. The main obstacle for the deaf or hard of hearing child is getting access to spoken language, which most people with typical hearing take for granted.

Parents are challenged to educate the educators about the need to provide full access to the classroom's oral information under an educational system that does not require schools to maximize the student's education. Instead, public schools only have to provide a basic floor of educational opportunity with no guaranteed result.

To develop language, listening and speaking skills the child needs to be immersed in an oral, language rich program with appropriate support and services. Typically, the goal is to mainstream the child into a general education classroom setting. Use of sign language and other inappropriate visual cues can undermine efforts to develop listening and speaking skills because visual and oral communication each engage different parts of the brain.

Public schools are often concerned that the child will fall behind academically by using only oral communication skills. Many districts have pre-conceived notions that sign language or Total Communication programs are the only way to educate the deaf child. The challenge is to focus the school on supporting the child's preferred mode of communication and explaining to them what that means for the student that uses spoken language.

## II. Definitions

There is a lot of confusion about the meaning of basic terms associated with the education of children that are deaf or hard of hearing. Precise understanding is critical to advocate for the needs of the individual student. Often a particular program or service will be incorrectly labeled, making it unclear as to exactly what is being offered for the student. It is helpful to define basic terms to properly address the student's needs.

*Audition:* The act, sense, or power of hearing.

*Aural:* Of or pertaining to the ear or to the sense of hearing.

*Oral:* Uttered by the mouth; spoken; of, using, or transmitted by speech. *Aural* and *oral* are sometimes confused with each other.

*American Sign Language (ASL):* The sign language most often used by the North American deaf community. ASL is its own language with a distinct grammatical structure and is recognized by many High Schools and Colleges as an alternative to the foreign language requirement.

*Speech Reading:* Use of lip and mouth movements, facial expressions, gestures, prosodic and melodic aspects of speech, structural characteristics of language and context. Speech Reading is often confused with lip reading.

*Cued Speech:* Use of eight hand shapes in four locations in combination with natural mouth movements of speech to make the sounds of spoken language look different.

*Manually Coded English:* Use of finger spelling and ASL signs to represent the grammar and vocabulary of spoken English as accurately as possible.

*Auditory-Verbal:* Use of amplification to teach listening, process spoken language and to speak without signs, cues, speech reading or other similar visual cues.

*Oral-Aural:* Use of residual hearing to develop spoken language skills. Allows for use of speech reading, but not visual cues such as signing or Cued Speech.

*Total Communication:* Use of all means of communication, including speech, speech reading,

auditory training, sign language, and writing in the education of deaf or hearing-impaired children. Some Total Communication programs are really nothing more than sign language programs, where teachers and staff merely use their voice as they sign.

### III. Placement, Therapies and Technology

Education of the deaf child requires intensive therapy and technology to assist in the goal of learning to listen and speak. The nature of hearing loss and technology employed to assist in hearing requires attention to acoustic characteristics of the classroom.

#### A. Technology

*Cochlear Implants:* A surgically implanted electronic device that provides a sense of sound to a person who is profoundly deaf or severely hard of hearing. Unlike hearing aids, the cochlear implant does not amplify sound, but works by directly stimulating any functioning auditory nerves inside the cochlear with electrical impulses. External components of the cochlear implant include a microphone, speech processor and transmitter that also allow the individual to adjust the sound for quality and amplification.

*Computer Assisted Real Time Captioning (CART):* CART is word-for-word transcription. CART is similar to a certified shorthand reporter (commonly known as a court reporter). The captionist converts the words spoken in the classroom into text that is displayed on a computer screen so that the hearing impaired student can follow the teacher's lecture, other students' questions, class discussion or other oral information presented in the classroom.

Captioning captures all pertinent oral information presented in the classroom. By contrast, sign language interpretation only allows the hearing impaired student access to the oral expression of one person at a time with the need for the undivided visual attention of the hearing impaired student to the sign language interpreter. When the student focuses their attention only on the interpreter they miss critical oral information presented in the classroom and are unable to

follow and participate in classroom discussion.

CART allows the student to use their voice in class to participate in discussions which are critical for cognitive development and for improving voice quality so that others will more readily understand their speech. CART also allows the student to develop oral vocabulary and hone the ability to listen. As the student puts meaning to sounds with the help of CART they will be learning to communicate independently, with much less reliance on aids, in the future.

*Meaning-For-Meaning Transcription:* Several other types of transcriptions summarize the words spoken in the classroom. These meaning-for-meaning systems do not usually contain all the words spoken. For example, if a teacher uses four sentences to convey an idea while speaking, the transcriptionist may use two sentences to capture what is spoken to provide the meaning of what was said. Some students find meaning-for-meaning transcription confusing because they cannot locate a word they thought they heard on the display screen as with CART. On the other hand, other students prefer the meaning-for-meaning transcription format because there is much less to read. TypeWell and C-Print are the names of two meaning-for-meaning transcriptions systems.

*FM Systems:* Assistive listening devices that transmit the speaker's voice to an electronic receiver in which the sound is amplified and transmitted to the student's personal hearing device. FM systems reduce the problem of background noise interference and problems of distance from the speaker.

*Hearing Aids:* Electronic device that conducts and amplifies sound to the ear.

#### B. Acoustics

The physical classroom space where the deaf child will be taught needs to be acoustically appropriate. Classrooms are noisy and present many challenges for hearing impaired students who have difficulty tuning out extraneous noise. There should be minimal ambient noise, whether from HVAC or other systems. Likewise, classroom placement should limit intrusion of noise from outside the room. The classroom should be carpeted and

acoustic tiles installed in the ceilings. Where appropriate, other efforts need to be made to minimize noise, whether it be rubber tip chair legs, double pane windows, or elimination of background music.

### C. Therapies and Services

Various services and therapies are necessary to help the child to learn to listen and speak. Services that need to be considered include Auditory-Verbal Therapy, speech and language, and audiology services.

## IV. Laws Applicable to Oral Deaf Education

Several different laws apply to educating deaf and hard of hearing children in public schools. All of the laws that come into play can seem like a confusing jumble. The laws fall into two categories: education and anti-discrimination. The Individuals with Disabilities Educational Act, commonly known as IDEA, is a federal law passed by Congress to address the educational needs of disabled children in public schools. In addition to the IDEA, California has laws that specify what public schools must do to properly educate children that are deaf or hard of hearing. Public schools must follow both IDEA and California law.

There are also laws that make it illegal for public schools to discriminate against children that are deaf or hard of hearing. These anti-discrimination laws are known as the Americans with Disabilities Act, commonly known as the ADA. Another anti-discrimination law is called Section 504, which mirrors various parts of both the IDEA and the ADA's anti-discrimination provisions.

### A. FAPE and the Basic Floor of Opportunity

The cornerstone of special education law is to provide children with a free appropriate public education that is usually referred to as FAPE. A public school satisfies its FAPE obligation by providing personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction. FAPE only requires providing a basic floor of educational opportunity and does not require a school to maximize the potential of each disabled student

commensurate with the opportunity provided to non-disabled students.

Public schools must create an IEP to meet the individual needs of the disabled student. It is through a proper IEP that schools meet their FAPE obligations. Addressing the needs of the deaf or hard of hearing child through an IEP is a necessary part of complying with the law. It is only once the child's needs are met that the prohibition against maximizing education comes into play.

Educational benefit requires that an IEP be responsive to the student's needs, and also includes measuring educational benefit in relation to the potential of the child at issue. Sometimes public schools reverse this equation and argue that the child's needs were met because they managed to get good grades or achieve academic progress. Grades alone, however, don't always accurately reflect true achievement by the student and certainly do not show that the child is developing and utilizing their spoken language skills. Exclusive focus on grades is contrary to the law, which makes clear that there is no one test to gauge FAPE and that it must be provided even though the child has not failed a class or been retained.

### B. IDEA Requirement for Public School Students that are Deaf or Hard of Hearing

#### 1. *Hearing impairment is a qualifying disability under IDEA*

Hearing impairment, including deafness, is a qualifying disability making the child eligible for an IEP. Deafness means a hearing impairment that is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification, that adversely affects the child's educational performance. The hearing impairment can be permanent or fluctuating and the child will still be eligible for an IEP as long as it adversely affects their educational performance.

Speech or language impairment means a communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment, that adversely affects a child's educational performance. Speech or language

impairment often goes hand in hand with hearing loss. A speech or language impairment can be an additional basis for eligibility for an IEP and often a child may qualify for special education under several categories of disability.

## 2. *Related services*

Related services include: speech-language, audiology, interpreting services and habilitative activities, such as Auditory Verbal Therapy, auditory training, speech reading, lip-reading, hearing evaluation, and speech conservation. Related services are often called designated instructional services or DIS. The school must provide related services that the IEP team determines are necessary for the child to receive FAPE.

Related services do not include the cost of cochlear implant surgery, mapping, maintenance or replacement of the cochlear implant. Even so, the school must appropriately monitor hearing devices like cochlear implants and hearing aids to make sure they are working and functioning properly. This would include checking batteries and that the device is turned on.

*Audiology* services provided by the school include, identification of children with hearing loss; determination of the range, nature, and degree of hearing loss, including referral for medical or other professional attention for the habilitation of hearing. Other audiology services should include counseling and guidance of children, parents, and teachers regarding hearing loss; including determination of children's needs for group and individual amplification, selecting and fitting an appropriate aid, and evaluating the effectiveness of amplification.

*Interpreting* services includes oral transliteration services, cued language transliteration, sign language and interpreting services, and transcription services, such as CART, C-Print, and TypeWell.

## 3. *Considerations by IEP team for deaf and hard of hearing children*

The IEP team must consider the communication needs of the child. For a child who is deaf or hard of hearing, this includes considering the child's

language and communication needs, opportunities for direct communications with peers and professional personnel in the child's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child's language and communication mode. The IEP team must also consider whether the child needs assistive technology devices and services.

## D. California Law

California has laws in addition to IDEA that impose obligations on districts to provide for the educational needs of deaf and hard of hearing students. California law recognizes that the many appropriate communication modes for deaf children include sign language, oral, and aural, with or without visual signs or cues. Children must have an education in which their unique communication mode is respected, utilized, and developed to an appropriate level of proficiency under California law.

Legal recognition of the various modes of communication used by deaf children goes a long way toward rebutting district efforts to impose a placement or methodology that disregards the child's preferred mode of communication.

California law imposes rigorous requirement on schools when conducting an IEP for a child that is deaf or hard of hearing. The IEP team must consider and discuss related services and program options that provide the child with an equal opportunity for communication access.

Finally, California has declared how important it is to ensure that all deaf and hard of hearing children have appropriate, ongoing and fully accessible educational opportunities. This includes direct and appropriate access to all components of the educational process, including recess, lunch, and extracurricular social and athletic activities.

## E. ADA

The ADA prohibits discrimination against individuals with disabilities. The ADA states: “[n]o

qualified individual with a disability shall, by reasons of such disability, be excluded from participation or be denied the benefits of the services, programs or activities of a public entity, or be subjected to discrimination by any such public entity.” A public school must comply with the ADA. Hearing impairment and deafness is a disability under the ADA.

Most importantly the ADA requires that public entities take appropriate steps to ensure that communications with the disabled are as effective as communications with those that are not disabled. This means that public schools must ensure that communications with children that are deaf or hard of hearing be as effective as with those that have typical hearing.

Under the ADA, public schools must also provide the hearing impaired child with auxiliary aids and services that allow for equal participation in school. In selecting the aid or service, the public school must defer to the preference of the child that is deaf or hard of hearing.

The ADA differs from IDEA in that it focuses on providing equal access. IDEA on the other hand does not require that disabled children be provided with an education that is equal to non-disabled children.

The ADA contains explicit regulations that explain precisely what must be done to ensure equal communication access. These regulations are printed below.

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## 28 C.F.R. §35.160 General

(a)(1) A public entity shall take appropriate steps to ensure that communications with applicants, participants, members of the public, and companions with disabilities are as effective as communications with others.

(2) For purposes of this section, “companion” means a family member, friend, or associate of an individual seeking access to a service, program, or activity of a public entity, who, along with such individual, is an appropriate person with whom the public entity should communicate.

(b)(1) A public entity shall furnish appropriate auxiliary aids and services where necessary to afford qualified individuals with disabilities, including applicants, participants, companions, and members of the public, an equal opportunity to participate in, and enjoy the benefits of, a service, program, or activity of a public entity.

(2) The type of auxiliary aid or service necessary to ensure effective communication will vary in accordance with the method of communication used by the individual; the nature, length, and complexity of the communication involved; and the context in which the communication is taking place. In determining what types of auxiliary aids and services are necessary, a public entity shall give primary consideration to the requests of individuals with disabilities. In order to be effective, auxiliary aids and services must be provided in accessible formats, in a timely manner, and in such a way as to protect the privacy and independence of the individual with a disability.

(1) A public entity shall not require an individual with a disability to bring another individual to interpret for him or her.

(2) A public entity shall not rely on an adult accompanying an individual with a disability to interpret or facilitate communication except—

(i) In an emergency involving an imminent threat to the safety or welfare of an individual or the public where there is no interpreter available; or

(ii) Where the individual with a disability specifically requests that the accompanying adult interpret or facilitate communication, the accompanying adult agrees to provide such assistance, and reliance on that adult for such assistance is appropriate under the circumstances.

(3) A public entity shall not rely on a minor child to interpret or facilitate communication, except in an emergency involving an imminent threat to the safety or welfare of an individual or the public where there is no interpreter available.

(d) *Video Remote Interpreting (VRI) Services.* A public entity that chooses to provide qualified interpreters via VRI services shall ensure that it provides—

(1) Real-time, full-motion video and audio over a dedicated high-speed, wide-bandwidth video connection or wireless connection that delivers high-quality video images that do not produce lags, choppy, blurry, or grainy images, or irregular pauses in communication;

(2) A sharply delineated image that is large enough to display the interpreter's face, arms, hands, and fingers, and the participating individual's face, arms, hands, and fingers, regardless of his or her body position;

(3) A clear, audible transmission of voices; and

(4) Adequate training to users of the technology and other involved individuals so that they may quickly and efficiently set up and operate the VRI.

## **28 C.F.R §35.164 Duties**

This subpart does not require a public entity to take any action that it can demonstrate would result in a fundamental alteration in the nature of a service, program, or activity or in undue financial and administrative burdens. In those circumstances where personnel of the public entity believe that the proposed action would fundamentally alter the service, program, or activity or would result in undue financial and administrative burdens, a public entity has the burden of proving that compliance with this subpart would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the head of the public entity or his or her designee after considering all resources available for use in the funding and operation of the service, program, or activity and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this subpart would result in such an alteration or such burdens, a public entity shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, individuals with disabilities receive the benefits or services provided by the public entity.